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**VIA EMAIL**

January 29, 2020

City of Burlington  
426 Brant Street, P.O. Box 5013  
Burlington, ON L7R 3Z6

Attention: Mayor & Members of Council  
Ms. Jo-Anne Rudy, City Clerk

Dear Mmes and Messrs:

**Re: REQUEST FOR IMMEDIATE EXEMPTION FROM INTERIM CONTROL BY-LAW  
Better Life Retirement Residence Inc.  
441 Maple Avenue, Burlington**

We are counsel to Better Life Retirement Residence Inc., (“Better Life”), owner of the property known municipally as 441 Maple Avenue (“Subject Lands”), within the downtown area of City of Burlington (“City”). A complete application for an official plan amendment and zoning by-law amendment were submitted to the City on behalf of Better Life (“Application”). The Application would allow for the redevelopment of the Subject Lands with an 11-storey residential apartment building. At the same time, the Application would also allow for the long-term care facility currently existing on the Subject Lands to be relocated to another property owned by Better Life and known municipally as 4103 Palladium Way, which is also within the City. At its new location, the long-term care facility would be improved and intensified to add much-needed beds and jobs. The redevelopment of the Subject Lands is required in order to finance the improvements to and relocation of the long-term care facility.

The Subject Lands were captured by Interim Control By-law 10-2019 (“ICB”), which was passed by the City on March 5, 2019, well after the Application was submitted and deemed complete. Better Life has made numerous requests to be exempt from the ICB, including through correspondence from Dana Anderson of MHBC, Better Life’s planning consultant, and through correspondence from the undersigned dated January 13, 2020. To date, the request for exemption has not be granted.

Coming out of the ICB study is a proposed official plan amendment (“OPA”) and zoning by-law amendment (“ZBA”) that will be considered by Council on January 30, 2020 (together the “Proposed Amendments”). As previously indicated, the Proposed Amendments do not apply to the Application. The Clergy principle

applies in respect of the OPA, and the ZBA applies to a geographic area that does not include the Subject Lands.

We have reviewed the comments from other landowners and the responses from Staff, as appended to the Memo from Rosa Bustamante, dated January 30, 2020. It appears that Better Life is the only landowner seeking an exemption where a complete application was submitted prior to the ICB and the applicable lands are not at all impacted by the ZBA.

It is clearly appropriate to exempt the Subject Lands now, at the January 30, 2020 meeting, before the ZBA is appealed to the Local Planning Appeal Tribunal (“Tribunal”). There are no issues that could be raised on appeal that could in anyway impact the Subject Lands or the Application, since the ZBA does not apply to the Subject Lands. Once an appeal is filed, the ICB remains in effect until the disposition of the appeal. It is common for the appeal process to take several months and even years. Failing to exempt the Subject Lands from the ICB at this time will cause further undue delay and costs to Better Life, as they will be forced to make a protective appeal in order to seek an exemption from the Tribunal. The costs of taking these steps are not costs that Better Life should have to incur and are easily avoidable if Council provides an exemption at its meeting on January 30, 2020.

In our respectful submission, it is incumbent on the City to apply the ICB cautiously and not continue to hold up Applications unnecessarily and without any basis. The Tribunal’s predecessor has said that municipalities, “should, as much as possible, refrain from deploying the heavy armory of the interim control by-law” and above all, should not use it to procrastinate<sup>1</sup>.

It is very unfortunate that the Application has been held up by the ICB process and was not exempt at the outset. This process is delaying the provision of essential long-term care services. It is appropriate and expected that the City would exempt the Subject Lands from the ICB at its meeting on January 30, 2020. The City has full authority to exempt individual properties from an active ICB. We understood that the City’s Legal Department had been directed to provide an opinion on the potential for exemption. It does not appear that anyone has followed through on this direction. Nonetheless, we can advise that the City’s authority to grant exemptions is clear from:

1. A plain reading of section 38(6) of the Planning Act, which expressly contemplates a reduction in the extent of the area covered by the ICB;
2. A review of pertinent jurisprudence<sup>2</sup>; and
3. Powers under section 34 of the Planning Act for passing and amending zoning by-laws.

We strongly urge the City to exercise its powers and mitigate any further undue hardship that the ICB will cause if the exemption is left to the Tribunal process, which may take several months to commence.

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<sup>1</sup> See *Avro Quey Ltd. v. Toronto (City)*, 2002 CarswellOnt 1762, 28 M.P.L.R. (3d) 327 at para. 12 (“*Avro Quay*”)

<sup>2</sup> Again, see *Avro Quay*.

Should you have any questions or concerns with the foregoing, please let me know. Otherwise, we look forward to receiving a response to the requested exemption.

Yours truly,

A handwritten signature in black ink that reads "Jennifer Meader". The signature is written in a cursive, flowing style.

Jennifer Meader  
JM/jm